Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

RHD MEMORIAL MEDICAL CENTER
c/o DAVIS & DAVIS
9442 CAPITAL OF TEXAS HIGHWAY
ARBORETUM PLAZA ONE 9th FLOOR
AUSTIN TX 78759

Carrier's Austin Representative Box
19

MFDR Date Received
JULY 13, 2007

Respondent Name
ZURICH AMERICAN INSURANCE CO

MFDR Tracking Number
M4-07-7421-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated July 13, 2007: "First, the patient presented to the ER, and as such, preauthorization was not required in this case. Second, the hospital did contact Zurich at admission and attempted to obtain authorization. Upon admission, the hospital contact Shelly Carman with Zurich, and was redirected to Mary Jo. During this phone call the hospital staff was expressly told by Zurich that no pre-certification was necessary for this admission and that no clinical records were required to be submitted. See attached correspondence from Tenet to Zurich American dated December 1, 2006 and affidavit of Ron Vaughan attached hereto. Based on these representations by Zurich, the hospital continued in the course of care expecting payment for the claim. Thus, Zurich has denied the claim as not being authorized, even though Zurich expressly stated it was not required for this admission in addition to the fact the patient was admitted through the ER."

Affidavit of John Rondel Vaughan, Director of Payor Compliance and Litigation Texas Region Tenet HealthSystem, dated June 28, 2007: "I have reviewed the records of the Hospital claim, and the records indicate that the charges for the goods, services and treatment provided were determined by the charge master in effect at the Hospital at the time they were rendered to the patient…it is my professional opinion that the Hospital's fee-for-service charges in this case are fair and reasonable. However, in this particular case, the records indicate that the admission was medical in nature and as such the reimbursement should be in accordance with the Hospital Fee Guideline inpatient medical rates."

Amount in Dispute: $6,090.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated August 7, 2007: "Carrier maintains its position. Requestor admits it attempted to obtain preauthorization for this admission, yet claims it was exempt from doing so. However, the record does not reflect a true emergency. The patient was being followed by the treating surgeon post surgery. Because of continuing complaints, the patient was referred to the hospital. While the patient was admitted through the emergency room at the direction of the treating doctor that does not mean this was a true emergency. In any event, the Requestor failed to obtain concurrent review once the 'emergency' resolved and the patient

stabilized. Carrier denied the hospital staff was told it did not need to preauthorized this admission. Such current allegation is based upon hearsay."

Response Submitted by: Flahive, Ogden & Latson

Respondent's Supplemental Position Summary Dated September 12, 2011: "Respondent submits this Respondent's Post-Appeal Supplemental Response as a response to and incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV…Based upon Respondent's initial and all supplemental responses, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded in accordance with the general *per diem* payment in accordance with 28 Texas Administrative Code §134.401 (repealed)…"

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
August 10, 2006 through August 18, 2006	Inpatient Hospital Services	$6,090.00	$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.600, effective May 2, 2006, 31 TexReg 3566, requires preauthorization for inpatient hospital services.
4. 28 Texas Administrative Code §133.2, effective May 2, 2006*, 31 TexReg 3544,* defines a medical emergency.
5. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits
- 240-Preauthorization not obtained.
- 62-Payment denied/reduced for absence of, or exceed, pre-certification/authorization.

Issues

1. Does a preauthorization issue exist in this dispute? Is the requestor entitled to additional reimbursement?

Findings

1. 28 Texas Administrative Code §134.600(c), states "The carrier is liable for all reasonable and necessary medical costs relating to the health care:
   (1) listed in subsection (p) or (q) of this section only when the following situations occur:
   (A) an emergency, as defined in Chapter 133 of this title (relating to General Medical Provisions);
   (B) preauthorization of any health care listed in subsection (p) of this section that was approved prior to providing the health care;
   (C) concurrent review of any health care listed in subsection (q) of this section that was approved prior to providing the health care."

   The requestor states in the position summary that "the patient presented to the ER, and as such, preauthorization was not required in this case."

The respondent states in the position summary that "**.**The patient was being followed by the treating surgeon post surgery. Because of continuing complaints, the patient was referred to the hospital. While the patient was admitted through the emergency room at the direction of the treating doctor that does not mean this was a true emergency."

28 Texas Administrative Code §133.2(3)(A) states "a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:
(i) placing the patient's health or bodily functions in serious jeopardy, or (ii) serious dysfunction of any body organ or part."

On August 10, 2006, Dr. Chirag Patel performed a consultation and reported his examination findings "Negative for fever or chills. Positive for nausea from the pain medication. The patient has been on PCA Demerol with better control of the pain. Review of systems also negative for fever or chills. Negative for chest pain, trouble breathing, palpitations, dizziness, or sycope. Negative for nausea, vomiting, abdominal pain, diarrhea, constipation, or urinary symptoms." Dr. Patel examined the claimant's extremity and wrote "Right knee well-healed scar. Right knee swelling plus, but no evidence of cellulitis or redness. Negative for erythema. Negative for wound dehiscence. Decreased range of motion to the right knee. CNS: No focal deficit."

On August 14, 2006, Dr. Francisco Delgado performed a consultation and reported "A 10-point review of systems at this point in time is negative." "The joint was aspirated yesterday afternoon resulting in 17,500 white cells with 97% neutrophils. The specimen sat on the floor for about 18 hours until it was finally submitted to the microbiology lab this morning." Plan and Impression: "Possible septic knee. At this point in time given that the specimen has been without plating for over 12 hours would make the culture very nonrevealing. At this point in time I would reaspirate the knee and submit a new specimen for culture."

The Discharge Summary report indicates the claimant was admitted for "pain control…Aspiration x2 of the knee was sent for labs. Culture and sensitivities were all negative."

The Division finds that the submitted documentation does not support a medical emergency defined in 28 Texas Administrative Code §133.2(3)(A). Therefore, the disputed inpatient hospitalization required preauthorization per 28 Texas Administrative Code §134.600.

The requestor further stated in the position statement that "Second, the hospital did contact Zurich at admission and attempted to obtain authorization. Upon admission, the hospital contact Shelly Carman with Zurich, and was redirected to Mary Jo. During this phone call the hospital staff was expressly told by Zurich that no pre-certification was necessary for this admission and that no clinical records were required to be submitted."
The respondent responds to this statement that "Carrier denied the hospital staff was told it did not need to preauthorized this admission. Such current allegation is based upon hearsay."

The Division finds no documentation to support that preauthorization was obtained in accordance with 28 Texas Administrative Code §134.600; therefore, reimbursement cannot be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed $40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount,* and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to $0.00 additional reimbursement for the services in dispute.

Authorized Signature

		2/8/2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.